

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

adrian EDWARD rekdahl,

Appellant.

No. 37413-7-II

UNPUBLISHED OPINION

Bridgewater, J. — Adrian Edward Rekdahl appeals his convictions of first degree felony murder, first degree burglary, and two counts of first degree assault. His convictions were the result of a home invasion to commit a robbery, in which the homeowner was shot and beaten, one house guest was killed, and one house guest was forced to flee for her life. We hold that the accomplice liability jury instruction was proper. But we further hold that the jury did not need to rely on the accomplice liability instruction because the jury had sufficient evidence to convict Rekdahl as a principal of felony murder and two counts of first degree assault, the first count of assault with specific intent to commit great bodily harm on the homeowner, and the second, as

transferred intent to the fleeing house guest. We affirm.

FACTS

On August 6, 2005, Gerald Newman had a barbecue and invited some guests over to his home on Evergreen Highway in Vancouver, Washington. At approximately 11:30 pm, all of his guests had left except Robert and Laura Harrington.¹

Newman, Robert, and Laura were in the kitchen talking when three men wearing ski masks and camouflaged clothes burst into the house through the front door. Each masked intruder wielded an assault rifle. Newman, shocked, rushed toward the front door to intercept the three intruders and exclaimed, “[W]hat the fuck are you doing in my house?” 2 RP at 177. His efforts to oust the intruders were futile; he was shot in the hip and beaten severely.

Robert and Laura did not witness what happened to Newman because, upon seeing three masked men with assault rifles, they ran out the back door. But as they frantically ran for their lives, Laura tripped down the deck stairs, Robert stopped to help her up, and one of the intruders caught them at gunpoint. Robert and Laura begged him to spare their lives; the intruder remained silent and pointed his assault rifle at them. Robert helped Laura to her feet and yelled to her to run.

They ran about halfway across the lawn when Laura heard the first gunshot and felt Robert push her forward. She kept running, eventually reaching a hedge with no way through. She heard four to five more gunshots, and, with nowhere to go, she dropped to the ground and crawled under the hedge. With nowhere to run without exposing herself, she sat silently under

¹ We refer to Robert and Laura Harrington by their first name to avoid confusion. We intend no disrespect.

the hedge, listening to the sound of leaves jostling as the gunman used his assault rifle to peer through the hedge to find her. Laura wondered if being shot would hurt.

Eventually, Laura heard a voice say, “[C]ome on, man, we gotta get the fuck out of here,” followed by the sounds of footsteps, three car doors shutting, and a vehicle leaving. 2 RP at 181. Laura could not identify any of the gunmen. Robert died from multiple gunshot wounds.

Rekdahl and the two other home invaders fled the scene in a vehicle. But with a tip from a neighborhood watch group, police stopped their vehicle and arrested the occupants, except Rekdahl, who had fled on foot.

The morning after the burglary and shooting, Dirk Ziemer received a collect phone call from Rekdahl asking for a ride home from Vancouver. Ziemer, who knew Rekdahl from living with him, agreed to give Rekdahl a ride. While Ziemer was driving, Rekdahl asked him to keep quiet about the ride and say that it “never happened.” 3 RP at 362. Ziemer arrived at his home with Rekdahl, stayed a couple hours, and then left with his wife. When Ziemer and his wife returned, Rekdahl was gone.

A few weeks later, Danny Stroup dropped Rekdahl off at an access road in the middle of a forest in Washington. While driving Rekdahl up to the forest, Rekdahl told Stroup that he “had to get away for a while” because he and some friends went to a house and “it went wrong.” 5 RP at 536, 548. Rekdahl said that he and the others had planned to “do a robbery,” and, while he was in the house, a scuffle ensued and gunfire broke out. 5 RP at 549. About a month later, Stroup returned to pick up Rekdahl at the same access road. Stroup turned Rekdahl over to authorities.

The State charged Rekdahl with first degree felony murder (count I), first degree assault

against Newman (count II), first degree assault against Laura (count III), and first degree burglary (count IV). Each of the charges alleged that Rekdahl was armed with a firearm.

At trial, the State admitted Rekdahl's address book, which contained "Newman" handwritten on the last page. 7 RP at 795. A handwriting expert also testified that Rekdahl's handwriting matched notes found inside an atlas. The atlas had a map marked that depicted the area of town in which Newman's house was located. A jury found Rekdahl guilty on all four counts and found that he used a firearm for each count.

I. Proper Accomplice Liability Instruction

"Jury instructions are sufficient if they are supported by substantial evidence, allow the parties to argue their theories of the case, and when read as a whole properly inform the jury of the applicable law." *State v. Clausen*, 147 Wn.2d 620, 626, 56 P.3d 550 (2002). We review the adequacy of jury instructions de novo as a question of law. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996).

Rekdahl argues that his assault convictions require reversal because the trial court erred in giving instruction 10 on accomplice liability, which stated in pertinent part:

A person is an accomplice in the commission of *a crime* if, with knowledge that it will promote or facilitate the commission of *the crime*, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

CP at 42 (emphasis added). Rekdahl contends that instruction 10 was defective because it was ambiguous for failing to specify the crime for which the State alleged he was an accomplice. We

disagree because, relying on *State v. Roberts*, 142 Wn.2d 471, 14 P.3d 713 (2000), we find that the accomplice liability instruction mirrored the accomplice liability statute.

In holding that the accomplice liability statute² has a mens rea requirement of “knowledge” of “the crime,” *Roberts* reiterated the precedent that an instruction referencing “the crime” “copie[s] exactly the language from the accomplice liability statute” and correctly hinges criminal culpability on the defendant’s knowledge of “the crime” for which he was charged as an accomplice. *Roberts*, 142 Wn.2d at 510-12. In fact, *Roberts* reaffirmed *State v. Davis*, 101 Wn.2d 654, 682 P.2d 883 (1984), which approved an instruction that mirrored the language of the accomplice liability statute. *See also State v. Hoffman*, 116 Wn.2d 51, 102-103, 804 P.2d 577 (1991) (upholding accomplice liability jury instructions that mirror the language of the accomplice liability statute).

The accomplice liability instruction in this case, instruction 10, mirrored the accomplice liability statute; it required knowledge that the defendant’s participation would promote or facilitate the commission of “the crime.” CP at 42; RCW 9A.08.020. Relying on *Sarausad v. Porter*, 479 F.3d 671 (9th Cir. 2007), *rev’d*, *Waddington v. Sarausad*, ___ U.S. ___, 129 S. Ct. 823, 172 L. Ed. 2d 532 (2009), Rekdahl contends that the trial court should have given an accomplice liability instruction that referenced the crime.³ His argument is not convincing because

² RCW 9A.08.020 states, in relevant part:

(3) A person is an accomplice of another person in the commission of a crime if:

- (a) With knowledge that it will promote or facilitate the commission of the crime, he
 - (i) solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) aids or agrees to aid such other person in planning or committing it.

³ In reversing *Sarausad*, the United States Supreme Court held that “[t]he Washington courts reasonably concluded that the trial court’s instruction to the jury was not ambiguous” because

instruction 10 contained the precise language that our Supreme Court upheld in *Roberts*.

Rekdahl also contends that his felony murder conviction requires reversal because instruction 12, the “to convict” first degree murder instruction,⁴ when read together with instruction 10, relieved the State’s burden of proving that Rekdahl was a principal or accomplice to the burglary. Rekdahl argues that section (2) of this “to convict” instruction relieved the State of its burden because, when read with instruction 10, the section “merely required one with whom [Rekdahl] acted as an accomplice to ‘a crime’ to have committed a burglary and caused the death of Robert.” Br. of Appellant at 25.

Rekdahl’s argument is not persuasive because, as explained above, instruction 10 correctly defined an accomplice as a person who has knowledge that his action “will promote or facilitate the commission of *the crime*.” CP at 42 (emphasis added). When read in conjunction with instruction 12, “the crime” refers to the predicate offense for felony murder in this case: first degree burglary. Thus, to convict Rekdahl of first degree felony murder, the jury could find either that he committed “the crime” of first degree burglary and caused Robert’s death or that an

“[t]he instruction parroted the language of the statute.” *Waddington*, 129 S. Ct. at 832. In light of this reversal, we examine the issue under the standards that our Supreme Court has established.

⁴ Jury instruction 12 provided in relevant part:

To convict the defendant, Adrian Edward Rekdahl, of the crime of murder in the first degree, as charged in count one, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about August 6, 2005, Robert Harrington was killed;
- (2) That the defendant, Adrian Edward Rekdahl, or an accomplice, was committing burglary in the first degree;
- (3) That the defendant, Adrian Edward Rekdahl, or an accomplice, caused the death of Robert Harrington in the course of or in furtherance of such crime or in immediate flight from such crime.

CP at 44.

accomplice committed “the crime” of first degree burglary and caused Robert’s death.

II. Sufficient Evidence

Although the jury received proper accomplice liability instructions, the jury did not need to rely on them in finding Rekdahl guilty of felony murder and assault. We hold that jury had sufficient evidence to find that he was a *principal* in the burglary, the predicate offense of the felony murder, and that he was a *principal* in the assaults of Newman and Laura.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We draw all reasonable inferences from the evidence in the State’s favor and interpret them most strongly against the defendant. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). A claim of insufficiency admits the truth of the State’s evidence and all reasonable inferences drawn therefrom. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

A. Felony Murder

The felony murder provision of the first degree murder statute states that a person is guilty of first degree murder when:

He or she commits or attempts to commit the crime of . . . burglary in the first degree . . . and in the course of or in furtherance of such crime or in immediate

flight therefrom, *he or she, or another participant*, causes the death of a person other than one of the participants.

RCW 9A.32.030(1)(c) (emphasis added). Although “participant” is not defined in the statute, “it is clear that a ‘participant’ must either be a principal . . . or an accomplice.” *State v. Carter*, 154 Wn.2d 71, 79, 109 P.3d 823 (2005). The felony murder provision “expressly establishes the nonkiller participant’s complicity in the homicide as a principal.” *State v. Rice*, 102 Wn.2d 120, 125, 683 P.2d 199 (1984). Thus, when the State establishes the defendant’s complicity in the predicate felony, the State need not prove that the nonkiller participant was an accomplice to the homicide. *Carter*, 154 Wn.2d at 78-79; *see State v. Bolar*, 118 Wn. App. 490, 503, 78 P.3d 1012 (2003). Instead, when the defendant’s “complicity in the underlying felony has been established . . . the coparticipant clause of the felony murder provision of the first degree murder statute operate[s] to impute criminal liability for the homicide committed in the course of or in furtherance of the felony.” *Carter*, 154 Wn.2d at 81.

The mens rea necessary for felony murder is the same mens rea necessary for the predicate felony. *State v. Osborne*, 102 Wn.2d 87, 93, 684 P.2d 683 (1984). The predicate felony in this case was first degree burglary:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, *the actor or another participant* in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

RCW 9A.52.020(1) (emphasis added). The mens rea for burglary is thus the “intent to commit a crime against a person or property” in the unlawfully entered building. RCW 9A.52.020(1).

Intent is “act[ing] with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). And “[w]hen acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.” RCW 9A.08.010(2).

Here, considerable evidence indicated that Rekdahl was a principal in the predicate felony of first degree burglary. First, Rekdahl’s address book contained “Newman” handwritten on the last page. 7 RP at 795. Second, a handwriting expert testified that Rekdahl’s handwriting matched notes found inside an atlas, which had a map marking the area of town where Newman’s house was located. Third, Ziemer testified that Rekdahl asked him to keep quiet about giving him a ride home from Vancouver on the morning after the crimes and to say that it “never happened.” 3 RP at 362. Fourth, Stroup testified that he drove Rekdahl to a desolate forest in Washington because Rekdahl “had to get away for a while” because he went to a house and “it went wrong.” 5 RP at 536, 548. Rekdahl even elaborated, saying that he and others planned to “do a robbery” when a scuffle ensued and gunfire broke out. 5 RP at 549. Finally, and most compelling, Rekdahl was one of three who entered Newman’s house while masked, dressed in camouflage, and carrying an automatic weapon. Because this evidence demonstrates that Rekdahl was a principal in the predicate felony of burglary, the State did not need to prove that he was an accomplice.

B. The Assaults

To prove first degree assault, the State had to show that (1) Rekdahl or an accomplice committed assault, (2) the assault was committed with a deadly weapon or by force likely to produce great bodily harm, and (3) Rekdahl or an accomplice intended to inflict great bodily harm. RCW 9A.36.011(1)(a). In this case, the State relied on an accomplice liability theory. But

accomplice liability was not necessary to convict Rekdahl of assaulting Newman and Laura in the first degree because the jury had sufficient evidence that Rekdahl, having specific intent to assault them, was a principal to their assaults.

Here, considering the evidence in the light most favorable to the State, the jury had sufficient evidence to determine that Rekdahl assaulted Newman. Jury instruction 21 defined assault, in relevant part, as follows:

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP at 53. Rekdahl assaulted Newman the second he and the other intruders, in a show of force, simultaneously burst through the door. Rekdahl intended to create an apprehension of fear; he wore a mask and camouflage while wielding an assault rifle. And Newman, shocked after seeing Rekdahl burst through his front door, ran over in an attempt to oust the intruders. Newman was in a state of shock and actually feared bodily injury, as any reasonable person in that situation would have feared.

Rekdahl plainly assaulted Newman with a deadly weapon, the assault rifle, and Rekdahl also had specific intent to inflict great bodily harm on Newman. Although specific intent cannot be presumed, “it can be inferred as a logical probability from all the facts and circumstances.” *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). Rekdahl wrote “Newman” on the last page of his address book and said that he went to Newman’s home to “do a robbery,” which, taken together, indicates that Rekdahl targeted Newman. 7 RP at 795; 5 RP at 549. Indeed,

Rekdahl was undisputedly one of the three armed, masked, and camouflaged men who burst into Newman's home.

And almost immediately after bursting through the door, Newman was shot and severely beaten, which amounts to great bodily harm. Instruction 25 defined "great bodily harm" as:

Great bodily harm means bodily injury that creates a probability of death, or which causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

CP at 57. Newman's wounds were life threatening; in addition to his gunshot wound, he had several broken bones and a severe concussion. Newman also suffered a lasting limp, hip pain, knee pain, and psychological trauma. Finally, when considering Rekdahl's intent, we cannot ignore the fact that two of the three occupants of the residence were shot during the course of the home invasion and that the third barely escaped. Taken together, this is sufficient evidence for a rational juror to infer that Rekdahl had specific intent to inflict great bodily harm on Newman.

Sufficient evidence also supports finding that Rekdahl was a principal in assaulting Laura. A rational juror could find that Laura feared imminent great bodily harm when she saw Rekdahl burst into the home, masked, camouflaged, and wielding an assault rifle. Indeed, in her sudden fear and panic, she immediately ran out the back door, even leaving her friend, Newman, as he charged the intruders. And, as she fled, her fears were confirmed when she heard the intruders shoot Newman. To the extent that Laura was an unintended victim, it was not necessary for Rekdahl to have known that she was in the house when he entered to prove that he had specific intent to assault her. Under RCW 9A.36.011, once the State established Rekdahl's intent to

inflict great bodily harm, his mens rea transferred to any unintended victim. *Wilson*, 125 Wn.2d at 218. Thus, his specific intent to inflict great bodily harm on Newman transferred to Laura. Rekdahl plainly assaulted Laura upon entry into the home.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Houghton, P.J.

Hunt, J.